

STEPHEN THOMAS DAVENPORT, JR. #88208  
NEIL M. GERSTNER #105681  
DAVENPORT GERSTNER & McCLURE  
1990 N. California Blvd., Suite 650  
Walnut Creek, California 94596  
Telephone: (925) 279-3430  
Fax: (925) 932-1961

Attorneys for Defendant, PABCO BUILDING PRODUCTS, LLC

**UNITED STATES DISTRICT COURT  
NORTHER DISTRICT OF CALIFORNIA**

GREGORY CHAMBERS,

Plaintiff,

vs.

PABCO, LLC,

Defendant.

No. C07-03119 MHP

**DECLARATION OF NEIL M.  
GERSTNER IN SUPPORT OF  
DEFENDANT'S MOTION FOR  
DISMISSAL**

**Date: April 21, 2008  
Time: 2:00 p.m.  
Courtroom: 15**

I, Neil M. Gerstner declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law before all of the Courts of the State of California and am admitted to practice before the United States District Court for the Northern District of California. I am a partner in the law firm of Davenport Gerstner & McClure, attorneys of record in the instant action for Defendant Pabco Building Products, LLC.

2. On and before January 2, 2008 Mr. Stephen Thomas Davenport Jr. spent five (5) hours preparing a detailed and extensive Settlement Conference Statement for the court-ordered Settlement Conference which was scheduled for January 9, 2008. On January 8, 9 and 10, 2008 I spent eight and one-half (6.5) hours preparing for, traveling to and from and attending the court-

1 ordered Settlement Conference which was scheduled for January 9, 2008, and subsequently  
2 preparing a Supplemental Status Conference Statement for this Court. I prepared for and attended  
3 the Settlement Conference in place of Mr. Davenport because he was unavailable due to the death  
4 of his mother. I attended the Settlement Conference with Defendant's Plant Manager, Mr. Charlie  
5 Coleman, who had traveled from Newark, California to be in attendance. At approximately 3:20  
6 p.m., after waiting an hour and 20 minutes, Magistrate Judge Zimmerman advised me and Mr.  
7 Coleman that we could leave because the Court's own attempts to contact Mr. Chambers at all of  
8 the telephone numbers that it had on record were unsuccessful.

9 3. On January 14, 2008 Mr. Davenport spent three (3) hours traveling to and from and  
10 attending the Status Conference which the Court ordered for that date.

11 4. On March 14, 17 and 18, 2008 I spent six and one-half (6.5) hours researching and  
12 preparing the notice of motion, memorandum of points and authorities and declarations relating to  
13 the instant Motion to Dismiss. .

14 5. My normal hourly rate is \$300.00 per hour and Mr. Davenport's normal hourly rate  
15 is \$325.00 per hour.

16 6. As a result of Plaintiff's failures to attend the court-ordered Settlement Conference  
17 and Status Conference Defendant has incurred attorney's fees for 21 hours of attorney time,  
18 totaling \$6,500.00, which was wasted and served no purpose.

19 I declare under penalty of perjury that I have read the foregoing statement, that its contents  
20 are true and correct, except as to those matters which are stated upon information and belief,  
21 which I believe to be true and correct, and that this Declaration was executed at Walnut Creek,  
22 California on March 18, 2008.

23 / s /

24 \_\_\_\_\_  
25 NEIL M. GERSTNER